

REMARKS

By this amendment, claims 1-5 and 7-11 are pending, in which claims 6 and 12 are canceled without prejudice or disclaimer, claims 1 and 7 are amended, and no claims are withdrawn from consideration or newly presented. No new matter is introduced.

The Office Action mailed December 31, 2008 objected to claim 1 and rejected claims 1-12 under 35 U.S.C. § 112, second paragraph, and under 35 U.S.C. § 102(e) as anticipated by *Lee et al.* (US 2002/0053058).

Regarding the Office Action's objections to the drawings, Applicants have amended FIGS. 1, 2, and 6 to include a reference to "BACKGROUND ART" and have amended the specification to include a brief description of reference numerals 10, 14, 21, and 26 from FIG. 1. However, Applicants respectfully traverse the objection to FIG. 4, as all reference characters are fully described on pages 15 and 16 of the specification. Accordingly, the objection to the drawings is overcome.

Regarding the objection to claim 1, line 6 has been amended to delete the extra "the."

Further, claims 1 and 7 have been amended to refer to "the first data block" rather than "the latter," thereby overcoming the rejection of claims 1 and 7 under 35 U.S.C. § 112, second paragraph.

Applicants respectively traverse the rejection of claims 1-12 under 35 U.S.C. § 102(e), as *Lee* fails to disclose "requesting a further, redundant data block for error correction" but "retransmitting the first data block instead of a redundant data block," no less "a further, redundant data block is additionally transmitted." Before the current amendment, each of independent claims 1 and 7 recited "... a further **redundant data block is requested**" but "... **the first data block instead of a redundant data block is retransmitted.**" The Office Action

on page 4 states that the retransmission step is disclosed by *Lee* “section [0025], lines (17-19).”

Paragraph 25 states:

[0025] Returning to **FIG. 2** again, the first packet that gets transmitted to the receiver is self-decodable and has its puncturing pattern of a(1). Next, the receiver checks whether its buffer is empty (S11). If it is, the receiver decodes the received packet since the packet is self-decodable (S13). Then it checks whether an error has occurred in the step S14 (S15). If there was no error, the receiver empties the buffer and terminates the transmission (S16). However, if there was any error occurred, an index representative of how much the packet is damaged (i.e., the Signal-to-Noise power ratio (Eb/No)) is compared with a predetermined threshold value (S17). If the ratio is greater or equal to the threshold value, the receiver stores the packet in the buffer (S18) and sends NACK 1 to the transmitter requesting to transmit another packet encoded with a lower code rate (S20). This packet is punctured with a second puncturing pattern, a(2) and is not self-decodable. If the ratio is less than the threshold value, it sends NACK 2 requesting to re-transmit the same packet punctured with a(1) which is self-decodable.

Lee discloses in the above passage that the data blocks that are re-transmitted are exactly those which have been requested in a specific message (NACK1 and NACK2) before, which is contrary to the claimed step of retransmitting a first data block **instead** of what was requested (i.e., a redundant data block). Consequently, *Lee* does not anticipate claims 1-5 and 7-11 prior to amendment.

By re-transmitting the first data block instead of the requested redundant data block, the error rate, without error correction, can be measured **without** changing the standardized processes in the mobile device and signaling on the interface between mobile device (transmitter/receiver device) and base station (transmitter/receiver station). If the mobile device detects an erroneous data block, it requests the re-transmission of a redundant data block in a standard conform manner. Only the measuring device applying the inventive method reacts in a way to allow a data transmission without the usual and standard conform error detection and to enable measurement of the error rate without error correction.

Lee shows a method using dedicated messages (NACK1 and NACK2) in the mobile device to request either a redundant data block or a first data block. This requires a dedicated behavior of the mobile device which deviates from the usual standardized behavior. Therefore, the claims prior to amendment would not have been obvious over *Lee*.

Nonetheless, in the interest of reducing issues for potential appeal, independent claims 1 and 7 have been amended to include the features of claims 6 and 12, respectively. Claim 1 now further recites “a further, redundant data block is additionally transmitted by the transmitter/receiver station in the event of a request for a further data block, in order to compare the determined error rate without error correction with an error rate with error correction by incremental redundancy.” Claim 7 now includes an equivalent limitation. The Office Action states, on page 6, that *Lee* discloses the above-noted limitation in “Figure 2, step (S15) and NACK II is sent in *Lee*).” Figure 2 shows that NACK I is sent (S19) if a threshold value is met (at step (S17)) or NACK II is sent (S20) if the threshold value is not met (at step (S17)). *Lee* discusses, in paragraph [0025] (reproduced above), requesting a different packet if the signal to noise ratio is greater than or equal to a threshold value **or** requesting the first data block if the ratio is less than a threshold value. However, nowhere does *Lee* disclose transmitting both the first data block and a redundant data block, as positively recited in amended claims 1 and 7.

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim." *In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). *See also Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). Since *Lee* fails to disclose retransmitting the first data block instead of a redundant data block and additionally transmitting a further, redundant data block, *Lee* cannot anticipate claims 1-5 and 7-11, as currently amended. Accordingly, Applicants request withdrawal of the anticipation rejection.

Therefore, the present application, as amended, overcomes the objections and rejections of record and is in condition for allowance. Favorable consideration is respectfully requested. If any unresolved issues remain, it is respectfully requested that the Examiner telephone the undersigned attorney at (703) 519-9952 so that such issues may be resolved as expeditiously as possible.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 504213 and please credit any excess fees to such deposit account.

Respectfully Submitted,

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Date

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